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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/752,709	01/08/2004	John H. Hayes	010628.50-74C3	5556

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EXAMINER

CONLEY, FREDRICK C

ART UNIT	PAPER NUMBER
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3673

DATE MAILED: 02/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/752,709

Applicant(s)

HAYES, JOHN H.

Examiner

FREDRICK C CONLEY

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 November 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Terminal Disclaimer

The terminal disclaimer filed on 12/17/04 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of the full statutory term defined in 35 U.S.C. 154 and 173 has been reviewed and is accepted. The terminal disclaimer has been recorded.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 5,077,845 to Tokunaga et al. in view of U.S. Pat. No. 4,011,610 to Parker.

Claim 1, Tokunaga discloses a mattress system, comprising:

a mattress having a top surface and a bottom surface;

a cavity 5 arranged in the mattress, the cavity being open at least toward the top surface and having a defined size;

an expandable cushion (7a,7b,7c,d,7e) arranged in the cavity;

a mattress protector 29 covering at least the top surface of the mattress,

the protector including a portion that extends over the expandable cushion arranged in the cavity; and

a control system (col. 6 lines 50-60) operatively coupled with the cushion to control an expansion and contraction of the cushion, wherein the control system includes a fluidic

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pump (10a) arranged to pump fluid into the expandable cushion, a fluid relief mechanism (10b) arranged to allow fluid to escape the expandable cushion, a fluid pressure reservoir for maintaining a relatively constant pressure in the fluidic system, and a fluid pressure switch operable to automatically activate and deactivate the fluidic pump to maintain a defined pressure level in the expandable cushion. Tokunaga fails to disclose the mattress protector having a portion 40 that extends into the cavity. Parker discloses a mattress system having a mattress protector having a portion that extends into a cavity (col. 2 lines 15-20). It would have been obvious to one having ordinary skill in the art at the time of the invention to employ a portion that extends into the cavity as taught by Parker in order to fully cover height of the aperture of Tokunaga.

Claim 2, wherein the fluid is air, and wherein a control switch 24 is provided to control an inflation and deflation of the expandable cushion.

Claim 3, wherein the control switch is an electric control switch.

Response to Arguments

Applicant's arguments filed 11/30/04 have been fully considered but they are not persuasive.

As to Applicant's arguments concerning U.S. Pat. No. 6,725,485, previous prosecution of any such US Application notwithstanding, the rejection involving Tokunaga and Parker is tenable for the reasons set forth above.

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Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to FREDRICK C CONLEY whose telephone number is 703-308-7468. The examiner can normally be reached on M-TH.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, HEATHER SHACKELFORD can be reached on 703-308-2978. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

FG




**MICHAEL SAFAVI
PRIMARY EXAMINER
ART UNIT 354**